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OFFICE OF PETITIONS

In re Application of :
Galligan et al. : DECISION ON PETITION
Application No. 10/810,195 :
Filed: March 25, 2004 :
Attorney Docket No. :
4339/43581(CON) :

This is a decision on the petition filed July 16, 2004 (certificate of mailing dated July 14, 2004), requesting that Figures 2A-2D be considered as filed on March 25, 2004, as part of the original disclosure. The Office of Petitions recently received the petition for a decision on the merits. The Office sincerely apologizes for any inconvenience caused to applicants.

On March 25, 2004, applicants filed the above-identified application. On June 14, 2004, the Office of Initial Patent Examination mailed a Notice To File Corrected Application Papers (Notice), requiring replacement drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121. Additionally, the Notice stated that the application had been accorded a filing date of March 25, 2004, and advised applicants that Figures 2A-2D described in the specification appeared to have been omitted.

In response, on July 16, 2004 (certificate of mailing dated July 14, 2004), applicants filed the present petition, 18 sheets of replacements drawings, including Figures 2A-2D, and an authorization to charge the Deposit Account for any necessary fees.

In the present petition, applicants make reference to a preliminary amendment dated March 25, 2004. Applicants assert that Figures 2A-2D were included with the preliminary amendment. Upon review of the record, Figures 2A-2D have not been located in the official file. Additionally, there is no indication that Figures 2A-2D were incorporated by reference.

The Office notes that the mere reference to another application is not an incorporation of anything therein into the application containing the reference. See In re Seversky, 177 USPQ 144, 146 (C.C.P.A. 1973) and Dart Industries, Inc. v. Banner, 207 USPQ 273, 276 (D.C. Cir. 1980). See also, Advance Display Systems Inc. v. Kent State University, 54 USPQ2d 1673 (Fed. Cir. 2000).

Lastly, applicants did not submit an itemized date-stamped postcard receipt showing that Figures 2A-2D were submitted on March 25, 2004. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The Office has a well-established and well-publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt, which itemizes and properly identifies the papers that are being filed, serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped by the Office. See MPEP 503.

If applicants have a postcard receipt showing that Figures 2A-2D were filed on March 25, 2004, the postcard receipt or a copy thereof should be supplied on renewed petition.

The petition is dismissed. The determination of whether Figures 2A-2D constitute new matter will be made by the examiner. Therefore, Figures 2A-2D will not be entered at this time. The \$130.00 petition fee will be charged to Deposit Account No. 05-1070, as authorized.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Christina Tartera Donnell, Senior Petitions Attorney:**

By mail: Mail Stop Petition
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The Office of Initial Patent Examination is directed to process the application with a filing date of March 25, 2004, using the papers submitted on that date. **Figures 2A-2D will not be entered at this time.** Additionally, the Office should review the replacement drawings for compliance with 37 CFR 1.84 and 37 CFR 1.121.

Any inquiries related to this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions